

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
MISC. COMMERCIAL APPLICATION NO. E343 OF 2025

BHAVESH PRAVINCHANDRA DOBARIYA.....1ST
APPLICANT

VIVEK MANSUKHBHAI DOBARIYA.....2ND
APPLICANT

VERSUS

GAURANG JUGDISHBHAI PATEL.....1ST
RESPONDENT

CHETANI JIVABHAI KHUNTI.....2ND
RESPONDENT

SOI DAIRY INDUSTRIES LIMITED.....3RD
RESPONDENT

AND

TEJASWINI BUILDERS LIMITED.....INTERESTED PARTY

Coram: Before Justice R. Nyakundi

M/S Songok & Co. Advocates

M/S Matem Katasi & Associates

M/S Mukabane & Kagunza Advocates

RULING

1. Before this Court is an application dated 22nd day of October 2025 seeking the following orders:

a. *Spent.*

- b. *Pending the hearing and determination of this Application, a temporary injunction do issue restraining the 1st, 2nd and 3rd Respondents, their servants, agents and or employees from convening an Extra Ordinary General Meeting (EGM) to formally consider and vote on the removal of the 1st and 2nd Applicants as Directors of the 3rd Respondent.*
 - c. *Pending the hearing and determination of this Application, a temporary injunction do issue restraining the 1st, 2nd and 3rd Respondents, their servants, agents and or employees from negotiating repayment, restructuring or settlement of the debt owed to the Interested Party, or in any other manner whatsoever entering into any capital contribution plan affecting the shareholders of the 3rd Respondent.*
 - d. *Pending the hearing, and determination of this application, a temporary injunction to issue restraining the 1st, 2nd and 3rd Respondents, their servants' agents and or employees from issuing new shares to contributing shareholders or dilution of defaulting shareholders.*
 - e. *A special general meeting be convened by the 3rd Respondent in strict compliance with the Companies Act, 2025 and the Memorandum and Articles of Association of the 3rd Respondent.*
2. This application is based on the following grounds;
- a) *The company's affairs are being, or have been, conducted in a manner that is oppressive and is unfairly prejudicial to the interests of the 1st and 2nd Applicants.*
 - b) *The one (1) day notice of the Extra Ordinary General Meeting (EGM) issued by the 1st Respondent EGM the next day on 11/09/2025.*
 - c) *A request by the 1st and 2nd Applicants for postponement of the Extra Ordinary General Meeting proceedings against the 3rd Respondent*
 - d) *Save for a demand letter dated 15/4/2025 from the Interested Party, no imminent legal proceedings existed as at 10/09/2025, to justify the short notice and convening of the Extra Ordinary General Meeting (EGM) on 11/9/2025.*

- e) *The resolution requiring all shareholders to contribute their proportional share of the debt owed to the Interested Party, contravenes the hackneyed legal principle that recognizes the company as a separate legal entity from its shareholders.*
 - f) *In the event of insolvency of a company, the law provides for the procedure to be adopted for payment of creditors and other liabilities, particularly the Insolvency Act, Chapter 35 of the Laws of Kenya.*
 - g) *The construction contract executed on 21/03/2021 between the 3rd Respondent and the Interested Party provides for any claim or dispute, arising therefrom, to be referred to arbitration; a process that has not been invoked.*
 - h) *There is a conspiracy between the 1st Respondent, the 2nd Respondent and the Interested Party buildings, furniture and the parcel of land known as Title No. KAKAMEGA/SOY/3008 on which the dairy plant is constructed, in total disregard of the relevant laws.*
3. In support of the application is the supporting affidavit of the Applicant who deponed as follows:
- a. *That I am a male adult of sound mind and a Director/Shareholder in Soi Dairy Industries Limited, the 3rd Respondent herein, hence competent to swear this affidavit*
 - b. *That Soi Dairy Industries Limited was incorporated in Kenya under the Companies Act 2015 on 17th October 2019 and Certificate of Incorporation Registration No. PVT-AJU962P issued.*
 - c. *That as at 26/04/2024, Soi Dairy Industries Limited (the Company) had four (4) Directors/shareholders including Gaurang Jugdishbhai Patel, Chetan Jivabhai Khunti, Vivek Mansukhbhai Dobariya and myself. (Annexed is a copy of the Company Registration Form 12 (DR12) marked "BPD 1").*

- d. That it was agreed that the India-based Directors would be responsible for production, procurement and operations, whereas the Kenyan-based Directors would oversee sales, marketing and finance.
- e. That our company owns a parcel of land known as Title No. KAKAMEGA/SOY/3008 measuring approximately 120 Ha or thereabouts. (annexed is a copy of the Certificates of Lease marked BPD 2)
- f. That on 25/05/2020, our company entered into an agreement with Tejaswini Builders Limited (the Interested Party) for the construction of a boundary wall enclosing our premises on Plot No. KAKAMEGA/SOY/3008 at an agreed cost of Kshs. 8,379,240/=, an amount that our company paid as agreed.
- g. That another contract was executed on 21/03/2021 between our company and Tejaswini Builders Limited for construction of a dairy plants, staff quarters, external works, aluminum partitioning works, water tank platform, show room, office security cabin and staff Toilet, at an agreed cost of Kshs. 43,785,000/= out of which our company made an initial payment of Kshs. 7,291,267/=. (Annexed is a copy of the contract dated 21/03/2021 marked "BPD 3")
- h. That due to unexpected challenges in the operating environment, exacerbated by a dysfunctional board, our Company was unable to pay the outstanding balance to the Interested Party.
- i. That on 15/4/2025 the Interested Party instructed their Advocates to write a letter to our company demanding the outstanding amount of Kshs. 36,493,733/= in addition to other sums for penalties, interest and damages for breach of contract. (Annexed is a copy of the letter marked "BPD 4").
- j. That on 19/08/2025, the 1st Respondent shared with the 2nd Respondent and myself, a copy of a valuation of the company's property dated 5/7/2025 prepared by Prime Valuers, placing the total

value of the land, plant and machinery at Kshs. 92,973,800/=.
(Annexed is a copy of the Valuation Report marked "BPD 5").

- k. That despite the financial hiccups, the company is still running its business, supplying milk and other dairy products to its customers.*
- l. That instead of engaging in mutually beneficial discussions on the best mode of discharging the debt owed to the Interested Party, the 1st and 2nd Respondents resorted to threats intimidation and coercion, with the sole aim of creating a non-existent financial crisis in preparation for a premeditated conspiracy to dilute the shares of the 2nd Applicant and myself, and eventually remove us from Directorship.*
- m. That the construction contract executed on 21/3/2025 provides for reference of any claim or dispute to arbitration, a process that the 1st and 2nd Respondent have deliberately chosen to overlook as they rush to execute their unlawful activities.*
- n. That on 10/9/2025 the 1st and 2nd Respondents emailed to the 2nd Applicant and myself, a document titled "Formal Demand for contribution and Attendance-Urgent Matter", warning us of imminent legal proceedings relating to the outstanding debt, accusing us of breaching our fiduciary duty to the company, and formally inviting us to attend an Extra Ordinary General Meeting (EGM) scheduled to take place the next day, that is, on 11/9/2025 from 10.30 am-11.00 am Kenyan time. (Annexed is a copy of the Formal Demand for Attendance and Contribution marked "BPD 6").*
- o. That due to the short notice, the 2nd Applicant and myself were unable to attend the scheduled meeting, and requested for postponement but the 1st and 2nd Respondents insisted on proceeding with the meeting as scheduled. (Annexed is a copy of the response letter dated 10/09/2025 and marked "BPD 7").*
- p. That on 10/9/2025, the 1st Respondent emailed the Revised Agenda and detailed EGM agenda, which included the appointment of a*

- chairperson to preside over the meeting. (Annexed is a copy of the email and agenda marked "BPD 8" and "BPD 9" respectively).
- q. That following the EGM, the 1st Respondent sent minutes to all Directors and shareholders of the company. (Annexed are the email dated 11/9/2025 and copies of the Minutes marked "BPD 10" and "BPD 11" respectively).
- r. That together with the minutes, the 1st Respondent served the 2nd Applicant and myself with a "Notice of Intention to Remove Directors under Section 139 of the Companies Act, 2015", which notice also served as 28 days' notice of an Extra Ordinary General Meeting (EGM) to be convened for shareholders to consider and vote on the resolution. (Annexed is a copy of the Notice marked "BPD 12").
- s. That on the same day, that is, on 11/09/2025, the 1st and 2nd Respondents served the 2nd Applicant and myself with a "Capital contribution Demand Notice" requiring us to personally contribute towards settlement of the company's liabilities not later than 10/10/2025. (Annexed is a copy of the demand marked "BPD 13").
- t. That a circular dated 11/9/2025 was sent to all Directors and shareholders, warning them that failure to participate in the agreed capital contribution plan will be treated as breach of fiduciary duty, exposing the defaulting Directors to personal liability. (Annexed is a copy of the Circular marked "BPD 14").
- u. That apart from the short one-day notice of the Extra Ordinary General Meeting (EGM), the minutes do not disclose how the 1st Respondent was appointed to act as the Chairperson, and who authorized him to also take minutes of the meeting, thus acting as both Chairperson and Corporation Secretary in contravention of the Companies Act, 2015.
- v. That we are advised by our advocates on record that the resolution compelling all Directors/shareholders to contribute towards the settlement of the debt owed to the Interested Party, violates the

hackneyed legal principle that recognizes the company as a separate legal entity from its shareholders, unless the corporate veil is lifted by an order of a Court of law.

- w. That the manner in which the 1st and 2nd Respondents convened, conducted and passed resolutions at the Extra Ordinary meeting (EGM) is not only oppressive and unfairly prejudicial to the interests of the 2nd Applicant and myself, but also contravenes express provisions of the Companies Act 2015, as well as our company's Memorandum and Articles of Association.*
 - x. That in the circumstances, it is only fair that this Court intervenes by nullifying the notice dated 10/9/2025, the proceedings and resolutions passed on 11/9/2025, and orders the convening of a proper meeting in accordance with the Companies Act, 2025, as well as the 3rd Respondent's Memorandum and Articles of Association.*
4. In response to the application 1st Respondent filed a replying affidavit dated 29th October 2025 sworn by Gaurang Jagdishbhai Patel who deposed as follows:
- a. That we are the Directors, of the 3rd Respondent herein, hence competent to swear this affidavit.*
 - b. That we have read and understood, the contents of the application, dated 22/10/2025 and wish to respond as follows.*
 - c. That it is not true that, the 3rd Respondent/company's affairs, have been conducted, in a manner that is oppressive and is unfairly prejudicial, to the interests, of the 1st and 2nd Applicants herein.*
 - d. That our company, which is the 3rd Respondent herein, was served with a demand letter, dated 15/4/2025, claiming payment of Kshs. 36,493,733/=, owed to Tejaswini Builders, who have been sued, as the interested party herein (See copy of the demand letter annexed and marked GJP 1').*

- e. *That the said demand letter, was served upon our company, the Applicant's herein and ourselves received the demand letter, but the Applicants, never gave their input, or response, to the said demand letter.*
- f. *That the debt claimed, in the said demand letter, arose from the construction contract, dated 21/3/2021, between the Interested party herein and the 3rd Respondent, where the interested party, agreed to construct a dairy plant, for the 3rd Respondent herein (See copy of the construction contract annexed and marked GJP 2).*
- g. *Clause 10.4, of the contract dated 21/3/2025, states that the contractor, shall resume possession and take over the project, if the client, fails to complete payment, within six months, from the date of the final invoice, with interest of twenty percent, on the outstanding amount.*
- h. *That our company, did not have funds, to pay the debt owed, to the construction company, which is the interested party herein and the Applicants herein, have been out of Kenya, over one year, thus we communicated to them, through calls and emails, seeking to engage them, on how to offset, the debt owed, to the interested party herein, but the Applicants were uncooperative and unwilling to contribute towards, offsetting the outstanding debt(See a bundle of the email extracts annexed and marked GJP 3).*
- i. *The Applicants only responded via email, as demonstrated by the annexed email extracts, that they will, come up with a plan, to settle the liability and that they would revert, on the same, but they never did, to date.*
- j. *The Applicants have refused, to attend company meetings and are unwilling to participate, in major decision makings and matters affecting the company, the actions of the Applicant, have negatively, affected our company, the actions of the Applicant, have negatively,*

- affected our company, which company, has over forty(40) employees, besides the casual employees and the company also serves, more than four hundred(400) farmers, who have all suffered, from the lack of ,smooth running of the company, occasioned by the Applicant's unwillingness, to participate in the affairs and running of the company.*
- k. That the 2nd Respondent and I, had to try and negotiate, with the interested party, to accord us more time, to seek funds, so as to settle, the outstanding debt, but we could not secure the funds, hence the interested party and their Advocate, refused to engage us any further, they informed us, that they were proceeding to Court, this prompted us, to fix an extra ordinary general meeting, to salvage the situation, with the hope that, we could pay the debt and avoid legal proceedings and the costs thereto.*
- l. That the extra ordinary general meeting, was to be held virtually, but the Applicants refused, to spare even a few minutes, towards the meeting, citing that the notice, was too short, yet they knew very well, how bad the situation, of the company was, due to the outstanding debt.*
- m. That in response to paragraph (d) of the grounds, of the Applicants' application, the Applicants have stated that, no imminent legal proceedings existed as at 10/9/2025, it is clear that the Applicants, disregarded the demand letter and are not worried, about the company, being sued and the legal costs, which come with such cases.*
- n. In response to paragraph (e) of the grounds, of the Applicants' application, the Applicants, are not only shareholders, in the company, but they are also, the Directors of the company.*
- o. The company has no funds, to settle the outstanding debt, thus it was incumbent, upon the Directors, of the company, to resolve the issue, regardless of the company, being a separate legal entity.*

- p. *In response to paragraph (g) of the grounds, of the Applicants' application, the Applicants being Directors, of the 3rd Respondent, they are equally bound, by the contract, dated 21/3/2021, between the interested party herein and the 3rd Respondent, the Applicants are the ones, who have skipped, the arbitration process, by filing this application, in breach of the terms, of the aforesaid contract, we humbly pray that, the Applicants application, be dismissed, as it is an abuse, of the Court's process.*
- q. *In response to paragraph (h) of the grounds, of the Applicants' application, we have never, conspired with the interested party herein, on any matter and we are calling upon, the Applicants herein, to strictly prove, the allegations of conspiracy.*
- r. *In response to paragraph 4, of the Applicants' supporting affidavit, is dishonest of the Applicants, to state that, it was agreed that Applicants, would be responsible for production, procurement and operations, while we on the other hand, would oversee sales, marketing and finance, we are putting the Applicants, to strictly prove to this Honourable Court, this outrageous allegation.*
- s. *That, the Applicants, are seeking an equitable remedy, in this application and thus, they ought to have approached, this Honorable Court, with clean hands, but having failed, to disclose to this Court, that the company is in huge debt and having failed, to participate in the running, of the company and also failing to engage the company, on how to settle the outstanding debt, should lead this Honourable Court, to decline to exercise its discretion, in their favor.*
- t. *The Applicants, have really frustrated, the management and the running, of the company, by failing to attend meetings and failing to participate in major decision making, of the company's and would not let us, to manage the affairs, of the company, which action has*

occasioned, immense suffering, to the stakeholders, of the company, the employees and the farmers included.

- u. It is clear that, the Applicants have no interest, in salvaging the company, from legal proceedings and possible repossession, of the project, which is the subject, of the contract between, the interested party and the 3rd Respondent.*
 - v. The Applicant's prayers, for temporary injunction, is not sustainable, as there is no substantive suit, to warrant the grant, of temporary injunction orders and even if, the Applicants, intend to resolve, the suit substantively, through the miscellaneous application, it has not been demonstrated, how temporary the injunction orders are and pending what outcome.*
 - w. We humbly request this Court, to allow us to proceed, with the removal, of the Applicants, as the Directors, of the company, due to their unwillingness, to cooperate or contribute, to the well-being and smooth running, of the company, in order to sustain the company.*
 - x. That the instant application is unmerited and should be dismissed with costs to the Respondents.*
5. In response to the application Bhatia Bharat Kulbhusa filed a replying affidavit dated 29th October 2025 who deponed as follows:
- a. That I am a male adult of sound mind and one of the Directors at the Interested Party herein hence I am competent and authorized to swear this Affidavit on behalf of the Interested Party.*
 - b. That I have read the application dated 22nd October 2025 and its import having been explained to me I wish to respond as hereunder; -*
 - c. That I am reliably informed by my counsel on record that the instant miscellaneous application is premised on no substantive suit and since the interested party has filed ELDORET E& L CASE NO. E101 OF 2025, this instant application has been rendered nugatory and should be*

dismissed with costs to the interested party. (See copy of the plaint marked BKKI).

- d. That the 3rd Respondent is truly indebted to the Interested party as will be demonstrated herein below and the instant miscellaneous application is a clear gimmick pitying a disguised fight among its Directors on management issues and shareholding in order to delay and ultimately avoid paying the Interested Party a debt that now stand at Kshs. 59,861,117/=and counting.*
- e. That the Plaintiff entered into a Construction Contract dated 21st March, 2021 with the Defendant whereby it was agreed that the Plaintiff would undertake general construction works relating to the construction of a dairy plant, ETP, servant room and dog room, external work, water tanks platform, show room, office and external works at a general consideration of Kenya Shillings Sixty Million (Kshs. 60, 000, 000/=). (See annexed a copy of the agreement and copy of title deed marked as “BBK-2 a and b”)*
- f. That the Plaintiff avers that Clause No. 10:4 of the said Construction Contract dated 21st March,2021 provides that the Plaintiff would take possession and take over the project if the Defendant failed to complete payment within a period exceeding six (6) months from the date of the final invoice until full payment; in terms of payment any contractual balance shall be made upon which the site and the project shall forthwith be handed over to the Client subject to payment of interest at the rate of 20% of the outstanding amount annually.*
- g. That the Plaintiff undertook its obligations dutifully as per the terms of the said Construction Contract dated 21st March, 2021 and fully performed its part of the said contract without any complaints from the Defendant to date (Annexure marked BBK 3 a and b is the completion certificate and photograph).*

- h. That the Defendant has so far only paid a portion of the said agreed consideration, leaving an outstanding debt of Kenya Shillings Kenya Shillings Thirty-Three Million Seven Hundred and Ninety-Three Thousand Seven Hundred and Thirty-Three (Kshs. 33,793,733/=). plus interest of 20% on the balance from April 2022 to September 2025 now standing at Kenya Shillings Twenty Six Million Sixty Seven Thousand Three Hundred and Eighty Four (Kshs, 26,067,384/=) making a Total of Kenya Shillings Fifty Nine Million Eight Hundred and Sixty One Thousand One Hundred and Seventeen (Kshs.59,861,117/=) (See annexure invoice marked "BBK-4").
- i. That the Plaintiff instructed his advocates who did a demand letter but despite the demand the defendant did not pay (Annexed and marked BBK 5 is the demand).
- j. That the Defendant failed to pay the outstanding sum of money, and they then entered into an Acknowledgement of Indebtedness and Undertaking dated 27/6/2024 in which the Defendant acknowledged that it owed the Plaintiff the sum of Kenya Shillings Thirty Kenya Shillings Thirty-Three Million Seven Hundred and Ninety-Three Thousand Seven Hundred and Thirty-Three (Kshs. 33,793,733/=) plus interest of 20% on the balance from April 2022 to September 2025 now standing at Kenya Shillings Twenty-Six Million Sixty-Seven Thousand Three Hundred and Eighty-Four (Kshs. 26,067,384/=) making a Total of Kenya Shillings Fifty-Nine Million Eight Hundred and Sixty-One Thousand One Hundred and Seventeen (Kshs. 59,861,117/=) See annexure Acknowledgement of indebtedness and undertaking marked as "BBK-6").
- k. That the Plaintiff avers that in Clause No. 2 of the said Acknowledgement of Indebtedness and Undertaking dated 27/6/2024 it was expressly and unambiguously agreed by the parties herein that in the event of default of payment after a final invoice had been issued,

then the Plaintiff will take over ownership of the constructed premises and land parcel KAKAMEGA/SOY/3008.

- l. That, the Plaintiff therefore seeks orders to enforce the provisions of clauses 2 and 3 of the said acknowledgement of indebtedness and undertaking dated 27th June, 2024.*
- m. That if the prayers sought herein are not granted as prayed, then there is a real danger that the Plaintiff will suffer substantial financial and material loss, whereas the defendant will end up being unjustly enriched.*

Decision

6. The gist of the primary application dated 22nd October 2025 is premised in Order 40 Rule 1 and 2 of the CPR together with Order 57 Rule 1 of the same Statute. It is also the case of the Applicant that the application is so hinged under Sections 780, 782, and 1004 of the Companies Act 2015. The High Court of Kenya has the jurisdiction with regard to grant of injunctions which are primarily guided by the principles established in **Giella v Cassman Brown & Co. Ltd [1973] EA 358**. Injunctions, particularly temporarily/interlocutory ones, are discretionary, equitable remedies designed to preserve the status quo of the subject matter until the main suit is determined.
7. The principles around this question of injunctions is now well settled as clearly settled in the following cases:
 - **Ngugi v Mwihaki & another (Commercial Case E004 of 2024) [2025] KEHC 11865 (27 March 2025):** *The High Court considered the thresholds for interlocutory injunctions, Mareva (asset freezing) injunctions, and mandatory injunctions, applying Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606.*
 - **Skycrapers Africaway Company Limited & Another v First Community Bank Limited [2025] KEHC 7264 (26 May 2025):** *The Court addressed the grant of temporary injunctions pending appeal,*

focusing on preserving the suit property to prevent the appeal from being rendered nugatory, citing *Erinford Properties Limited v Cheshire County Council*.

- ***Wabere & 4 others v Aqua Houses Ltd t/a Pearl City Apartments & 2 others [2025] KEELC 3145 (4 April 2025)***: The Environmental and Land Court (ELC) discussed the balance of convenience in granting injunctions, analyzing which party would suffer greater harm.
- ***Rono v Bank of Africa Limited & another [2025] KEHC 9089 (26 June 2025)***: The Court discussed the balance of convenience when it is not "clear cut" whether a prima facie case or irreparable loss has been established.

8. The other key factor in which a Court can exercise discretion to deny or grant an injunction is the Applicant to meet the threshold of irreparable injury which the Court address in the case of ***Pius Kipchirchir Kogo vs. Frank Kimeli Tenai (2018) eKLR*** the Court stated. Thus:

"Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury."

9. On what a prima facie case is the case of ***Mrao v First American Bank of Kenya Limited & 2 Others [2003] eKLR***, the Court of Appeal defined the same when the Court held;

"So what is a prima facie case? I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right

which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.

But as I earlier endeavoured to show, and I cited ample authority for it, a prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the Applicant's case upon trial. That is clearly a standard which is higher than an arguable case."

10. Simultaneously with this application a notice of preliminary objection was raised in the following terms:

a) TAKE NOTICE that the Interested Party herein shall, at the earliest opportunity raise Preliminary Objection to the application dated 22nd October 2025. The objection shall be based on the following express and mandatory provision of the law:-

a. That this matter is sub judice since a substantive suit has been filed by the interested party in ELDORET E & L CASE NO. E101 OF 2025 Tejaswini Builders Limited Vs Soi Dairies Limited in a Court of concurrent jurisdiction.

b. That the Applicant has not filed a substantive suit yet the injunctive orders sought in this instant application are substantive in nature and are prejudicial to the interested party and the fair hearing and determination of ELDORET E& L CASE NO. E101 OF 2025 Tejaswini Builders Limited Vs Soi Dairies Limited.

c. That the instant application is vexatious in nature and should be declared so as provided under the Vexatious Proceedings Act Cap 41 since as demonstrated in the replying Affidavit hereto, the 3rd Respondent is truly indebted to the Interested party and this Application is a calculated gimmick to delay and or avoid payment of the debt that now stands at Kshs. 59,861,117/=.

d. And the Interested Party shall pray that the application dated 22nd October 2025 be dismissed with costs.

11. The onus of establishing the criteria of being granted an injunction is vested with the Applicant and it never shifts to the Respondents or Defendants. Through this numerous cases which somehow settles the law injunctions the parties have got to understand and appreciate that an injunction is discretionary, temporarily aim at maintaining the status quo ante bellum 'the state of affairs before the dispute' until the substantive suit is determined. The Courts emphasize that such an order is granted to prevent irreparable damage to the Applicant's rights, which cannot be adequately compensated by damages alone.
12. The Applicants in this case seeks an interlocutory order from the Court with regard to restraining the 1st, 2nd & 3rd Respondents, the agents or employees from convening an Extra Ordinary Meeting EGM for removal as Directors of the 3rd Respondents. First and foremost, there is no substantive suit on record to demonstrate to this Court what are the issues to be resolved in favour of the Applicants on the merits demanding preservation of the *status quo*. An injunction by its own nature looks at the present and the future dependent upon on the existences of a substantive cause of action. For me, I am yet to see a serious question or issue to be tried necessitating status quo to be maintained pending the determination of the suit on the merit. What is required at this stage is the Court to have a feel of the main suit in the form of a statement of claim, petition, plaint etc. to see whether on the face of the statement of claims or pleading the Plaintiff has shown existence of a legal right which he or she seeks to protect by a grant of an injunction so that not to render the claim or suit nugatory.
13. From the foregoing therefore stretching the law from the conditions of a prima facie case, irreparable harm or a balance of convenience, I hereby resolve that this application in its context and text has no legs

to stand on and the Applicants have not made up a case for the preservation of the Res and maintenance of status quo with regard to imminent elections of the Directors to the 3rd Defendant/Respondent. The application is lost and I see no need to expend legal labor and resources on the preliminary objection. Costs to be met by the Applicants for the benefit of the Respondents. Orders accordingly.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 20TH
DAY OF JANUARY, 2026**

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**R. NYAKUNDI
JUDGE**